

claims are patentably distinct. It is, in short, merely a restatement of the conclusion of patentable distinctness itself. In effect, the Office is stating nothing more than "the claims are different, therefore they are patentably distinct." The MPEP, however, requires that the Office present sound scientific reasons or examples to support a conclusion of patentable distinctness. Because this has not been done in the present case, Applicants submit that the Restriction Requirement is improper and should be withdrawn.

Applicants also note that Claim 6 (the only claim in Group II) depends from Claim 4. Claim 6 recites an additional step of co-transforming the host cells with a BRP gene. How this co-transformation renders the invention of Claim 6 patentably distinct from, say, Claim 4, is unclear. The Office does not provide any rationale for this conclusion.

Applicants also note that the goal (or the "end-point") of all of the method claims currently in the application is to produce enzymatically-active streptokinase. As written, all of the method claims present in the application are directed to "A method of producing streptokinase...." Thus, it is unclear how the Office can conclude that the "end-point" of Claim 6 is distinct from the "end-point" of Claim 4. In any event, the Office has not supported its conclusion by way of reasons and/or examples, and thus the restriction requirement is improper.

Finally, it is pointed out that MPEP § 803 states:

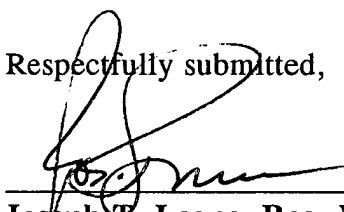
If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

In the present instance, the Office has indicated that the claims of Groups I and II are all classified in Class 435, sub-Class 194. Thus, there is no additional burden placed on the Office in examining all of the pending claims because a search of the claims of Group I will necessarily be co-extensive with a search for the invention recited in the single claim of Group II.

Lastly, Applicants reserve their right under *In re Ochiai* and *In re Brouwer* to seek rejoinder of claims not elected when those claims relate to a process of making or using nonobvious products (as codified in 35 U.S.C. 103(b)). See also the Official Gazette Notice of February 28, 1996, "Treatment of Products and Process Claims in Light of *In re Ochiai*, *In re Brouwer*, and 35 U.S.C. 103(b)." Therefore, upon allowance of the elected claims, Applicants request a review of the Restriction Requirement and rejoinder of the withdrawn claims (as suitably amended if necessary).

Applicants submit that the application is now ready for examination on the merits. Early notification of such action is earnestly requested.

Respectfully submitted,



Joseph T. Leone, Reg. No. 37,170
Colin L. Fairman, Reg. No. 51,663
DEWITT ROSS & STEVENS S.C.
8000 Excelsior Drive, Suite 401
Madison, Wisconsin 53717-1914
Telephone: (608) 831-2100
Facsimile: (608) 831-2106

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